DEPARTMENT OF STATE REVENUE

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Letters of Findings: 08-0254
International Registration Plan
For the Year 2004

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ISSUES

I. International Registration Plan Fees - **Imposition.**

Authority: IC § 6-8.1-4-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 9-28-4-6; IRP Audit Procedures Manual Section 603.

The Taxpayer protests the imposition of International Registration Plans fees assessed 100 percent to Indiana, the base state.

II. Commercial Vehicle Excise Tax – Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-6-5.5-3; IC § 6-8.1-5-4; IRP Audit Procedures Manual Section 603.

The Taxpayer protests the imposition of Commercial Vehicle Excise Tax on a full apportionment to Indiana.

STATEMENT OF FACTS

Taxpayer leases commercial motor vehicles and is subject to registration under the International Registration Plan ("IRP"). After an audit, Indiana Department of Revenue (Department) assessed IRP fees and Commercial Vehicle Excise Tax ("CVET") for 2004 against Taxpayer. Taxpayer protested the assessments and an administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as required.

I. International Registration Plan Fees - **Imposition.**

DISCUSSION

The IRP is an agreement between various United States jurisdictions and Canada allowing for the proportional registration of commercial vehicles and providing for the recognition of such registrations in the participating jurisdictions. The agreement's goal is to promote the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles. The agreement itself is not a statute, but was implemented in Indiana pursuant to the authority granted under IC § 6-8.1-4-2, IC § 6-6-4.1-14(b), and IC § 9-28-4-6.

All assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

Taxpayer states that for 2004 IRP registration, five of its fleets were audited by the Department with four of the fleets deemed to be almost "picture perfect" producing an audit adjustment of only $1,399 – this for fleets reporting over 32 million miles during the reporting period applicable to the registration year at issue. Taxpayer states that the audit of Fleet No. 11, the fifth fleet, did not produce a similar favorable outcome. Taxpayer states that although it is the registrant of the vehicles in accordance with IRP Article XI, it does not operate the vehicles on a daily basis and thus has no control over the day-to-day preparation and maintenance of the individual vehicle distance records required for IRP purposes. For Fleet No. 11, Taxpayer could only produce mileage summaries, not individual vehicle distance records ("IVDRs"). The Department's auditor deemed Taxpayer's records inadequate and imposed a 100 percent base state assessment pursuant to Section 603(a) of the IRP Audit Procedures Manual.

Under a 100 percent base state assessment, the registrant's mileage is deemed to have been 100 percent incurred in the base jurisdiction. In this case, the base jurisdiction is Indiana. The fees are adjusted accordingly, and no credit is afforded for fees paid to all of the other IRP jurisdictions in which Taxpayer operated. The 100 percent base state assessment is not a penalty; it is a default calculation in the absence of adequate records.

In this case, Taxpayer reported almost 40 percent of its mileage as incurred in other states and paid fees to all of those other states in accordance with that mileage percentage. Taxpayer protests that the 100 percent base state assessment requires it to double pay that portion of the assessment that it had already paid to other states because it received no credit by Indiana for the previously-paid fees received by other states.

Taxpayer states that its failure to document Fleet No. 11's mileage records for individual vehicles was due to its customers' failure to provide the appropriate IVDRs. Around 80 percent of the vehicles in this fleet were leased to a single customer ("Customer") who was unable to produce these records because they were mistakenly destroyed in preparation for a move. The remaining vehicles were mostly day-to-day rental vehicles which presented Taxpayer with problems in monitoring distance records.

Taxpayer argues that there is an acceptable alternative source for determining most of the audited mileage of the fleet in question for the 2004 registration year. Taxpayer notes that Section 603 of the IRP Audit Procedures Manual does not require a 100 percent base state assessment when IVDRs are not available. Taxpayer points

out that Section 603 merely states that a 100 percent base state assessment may be imposed. Taxpayer offers an alternative in the form of the Department's own previously-conducted IFTA audit of Taxpayer's customer which included the 2004 Registration year. Taxpayer argues that the mileage figures and resulting mileage percentages set forth by the Department in Customer's audit (which Taxpayer provided) demonstrate only minor variances (around 1 percent) from mileage Taxpayer reported for Customer on Taxpayer's IRP Schedule B.

Taxpayer recognizes that Customer did not lease all of the vehicles in Fleet 11. Taxpayer accepts a 100 percent base state assessment with respect to the remaining 20 percent of the vehicles since Taxpayer acknowledges that the records for those vehicles were inadequate and there is no reasonable alternative to determine mileage.

The IFTA audit of Customer that Taxpayer refers to deemed Customer's mileage records to have been inadequate relative to mileage from all origins to all destinations "because the records presented by [Customer] did not disclose origins, stops or destinations." The report describes Customer's mileage records as "not sufficient to verify reported total miles or reported jurisdiction mileage amounts." Customer explained at the time that the relevant records had been discarded.

IRP Audit Procedures Manual Section 603 states in relevant part:

> (a) During the preliminary phase of the Audit, the auditor will have made a request for IVDR's and distance summaries that support the apportioned registration application as filed. Operational Records must be adequate and complete for each Vehicle of the Fleet being audited. If the Operational Records are not made available, or if the records made available are inadequate for Audit purposes, an assessment of liability may be imposed in accordance with Article X of the Plan. If an estimate of the Registrant's true liability cannot be determined, the Registrant may be assessed 100 [percent] of the original Apportionable Fees for the Base Jurisdiction. Any credits calculated for Member Jurisdictions which are caused by the inadequacy of the Operational Records will not be reflected in the fees netted under Article X of the Plan.

The arguments Taxpayer makes are questions of simple fairness and equity. Based on the above, while Taxpayer clearly was compliant regarding four of its five fleets, unfortunately, in the case of the fifth one, Fleet No. 11, the Department's determination, that Taxpayer's records were not adequate, is reasonable and therefore the assessment stands.

FINDING

Taxpayer's protest is respectfully denied.

II. Commercial Vehicle Excise Tax – Imposition.

The Department assessed commercial vehicle excise tax (CVET) pursuant to IC § 6-6-5.5-3(a). The tax assessment was based upon 100 percent of the Taxpayer's miles (see Issue I). The Taxpayer protested the assessment contending that the tax should only have been apportioned, and therefore only imposed, on the Taxpayer's actual Indiana miles.

As explained in Issue I, all assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have the duty to maintain books and records of their affairs and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

Taxpayer protests the application of the 100 percent base state assessment to the Commercial Vehicle Excise Tax ("CVET") portion of the audit. Taxpayer points out that the only legal authority for a 100 percent base state assessment is the IRP Audit Procedures Manual Section 603 which provides that if true liability cannot be estimated, "the registrant may be assessed 100 [percent] registration fees for the jurisdiction." (Taxpayer's emphasis). Taxpayer argues that the CVET is not a "registration fee" at all, but rather a listed tax collected under Indiana's Tax Code and not under the Motor Vehicle Code in Chapter 28 of Title 9 that imposes registration fees. Taxpayer states that the Department "lacks authority to issue a 100 [percent] base state assessment when it comes to the CVET, and this portion of the assessment against [Taxpayer] should be vacated." Taxpayer, however, does not cite to any legal authority in support of its argument.

The authority to apportion Indiana miles for CVET purposes is found at IC § 6-6-5.5-3(b) as follows:

> Owners of commercial vehicles paying an apportioned registration to the state under the International Registration Plan shall pay an apportioned excise tax calculated by dividing in-state actual miles by total fleet miles generated during the preceding year. If in-state miles are estimated for purposes of proportional registration, these miles are divided by total actual and estimated fleet miles.

The statute ties the apportionment of CVET to the apportionment of IRP fees. If the Taxpayer pays apportioned IRP fees, the Taxpayer is statutorily allowed to pay apportioned CVET. If the Taxpayer does not pay apportioned IRP fees, the Taxpayer is not allowed to apportion its CVET. In this case, the Department properly disallowed the apportionment of the Taxpayer's IRP fees as discussed in Issue I of this Letter of Findings. Therefore, the Taxpayer cannot apportion for purposes of CVET and compute its tax due based only on its Indiana miles. The Department properly imposed CVET on all of the Taxpayer's miles.

FINDING

The Taxpayer's protest is respectfully denied.

CONCLUSION

Issue I – Taxpayer is denied on its protest of the IRP fee assessment.
Issue II – Taxpayer is denied on its protest of the CVET assessment.

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